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Executive Co-ordinator:
Nada Kahn, M.P.A.

Royal Commission on Matters of Health and Safety Arising from the Use of Asbestos in Ontario

180 Dundas Street West
22nd Floor
Toronto, Ontario
M5G 1Z8
416/965-1885

No: 82-2

April 1982

NEWSLETTER



1. Royal Commission on Asbestos -- Research

The Royal Commission on Asbestos has now published six studies. Please note that all studies were commissioned by the Royal Commission on Asbestos, but the views expressed therein are those of the authors and do not necessarily reflect the views of the members of the Commission or its staff.

Study No. 1 COLLECTIVE BARGAINING AND ASBESTOS DANGERS AT THE WORKPLACE (199 pages)
by Morley Gunderson and Katherine Swinton

Professor Morley Gunderson, an economist with the Centre for Industrial Relations of the University of Toronto, and Assistant Professor Katherine Swinton of the Faculty of Law of the University of Toronto review the operation of the collective bargaining system in Ontario under The Occupational Health and Safety Act with respect to occupational health and safety issues generally, and with respect to asbestos hazards specifically. They find that collective bargaining plays a potentially important role in dealing with occupational health and safety in Ontario. For example, most workers who are exposed to asbestos fibres in manufacturing are covered by a collective agreement. Professors Gunderson and Swinton find that the joint health and safety committees which are required by the Act play an important role in resolving occupational health and safety issues. While there is dispute over their effectiveness, it seems clear that they work better in unionized than in non-unionized settings. The arbitration procedure, however, which is widely used for resolving labour-management disputes, has not been used extensively for health issues.

The right to refuse unsafe work, which is provided by The Occupational Health and Safety Act, was expected by management to be abused, but Gunderson and Swinton find that, while there have been some refusals in asbestos manufacturing, there is no evidence of widespread abuse. Furthermore, the right of a worker to refuse unsafe work under the Act has seldom resulted in a formal grievance or complaint to the Labour Relations Board. The right to refuse unsafe work seems to be better protected in unionized than in non-unionized workplaces.

Study No. 2 WORKERS' COMPENSATION AND ASBESTOS IN ONTARIO (204 pages)
by Peter S. Barth

Professor Peter Barth of the Department of Economics of the University of Connecticut analyzes the operation of the workers' compensation system in Ontario with respect to claims for asbestos-related diseases, including some comparisons with procedures in Quebec and British Columbia. The analysis covers procedures for processing claims, procedures for calculating benefits,

the use of medical advisory committees, the use of guidelines for identifying asbestos-related diseases, and programmes to identify and rehabilitate injured workers. Professor Barth raises a number of questions about existing Ontario Workmen's Compensation Board (WCB) procedures. A major source of controversy regarding compensation for asbestos-related disease is the basis for rating permanent partial disability benefits. Ontario uses a medically based "impairment" approach, while some other jurisdictions use an economically based "disability" approach; miners in Quebec are covered by a mixed approach. A second major source of controversy occurs in cases where asbestos exposure aggravates a pre-existing condition that may not be work-related; the issue is whether the basis for compensation should be the total impairment, or only that impairment which the asbestos alone would cause in the absence of the pre-existing condition.

Professor Barth notes that the process used by the WCB to develop guidelines for dealing with claims, including asbestos-related ones, is closed to the public and to claimants. Opening the process of preparing these guidelines could considerably reduce controversy over their application and need not slow their development.

The author also points out that the WCB is often criticized because survivors of a deceased worker may receive full benefits if the deceased was rated as 100% disabled, and no benefits if he was rated as 90% disabled or less. This rule, however, is based in the statute, and is not within the Board's discretion. Several legislative solutions to this problem are proposed.

While Professor Barth identifies many problems in workers' compensation in Ontario, he states clearly that these problems "should not obscure the fact that the WCB confronts an enormously complicated task in its treatment of asbestos disease cases, and that the agency has grappled with it conscientiously and fairly."

Study No. 3 POLICY OPTIONS IN THE REGULATION OF ASBESTOS-RELATED HEALTH HAZARDS (318 pages)

by Carolyn J. Tuohy and Michael J. Trebilcock

Associate Professor Carolyn Tuohy, a political scientist, and Professor Michael Trebilcock, of the Faculty of Law, both of the University of Toronto, survey a variety of policy options that might be pursued to deal with asbestos-related health hazards in the workplace and in the general environment. Professors Tuohy and Trebilcock identify four frameworks that may be used to evaluate alternative policies: the scientific framework, the economic framework, the political framework, and the ethical framework. They identify the very different ways in which these frameworks can view alternate policies, and the degree to which they may make inconsistent demands. Because each framework has some relevance to problems of asbestos exposure, complex policy combinations may be needed to satisfy these competing demands.

Professors Tuohy and Trebilcock proceed to analyze several policy approaches in accordance with the four frameworks. The bargaining process that is explicit or implicit in any policy development is discussed. The use of civil liability, which has been widespread in the United States, and of criminal liability, are analyzed, as are tax and subsidy approaches. Standard-setting, which has been the principal regulatory instrument in Ontario, is extensively discussed. The appropriateness of these policies for asbestos-related problems in Ontario is reviewed at a general level.

Study No. 4 THE POLITICS OF RISK: THE IDENTIFICATION OF TOXIC AND OTHER
HAZARDOUS SUBSTANCES IN CANADA (124 pages)

by G. Bruce Doern

Professor G. Bruce Doern, a political scientist and professor of public administration at the School of Public Administration at Carleton University, examines the process of identifying hazardous substances in Canada. Looking first at past hazard identification procedures, Professor Doern reviews sixteen case studies of "health and safety" hazards. His analysis focuses on two central questions: How and why do certain hazardous substances or products get on the political agenda for public regulatory action while others do not? Are there better ways in which Canadian society and its political institutions can learn about and understand the nature and probability of the numerous risks we face so as to deal with the most important risks first?

Professor Doern goes on to look at the role of scientists, technicians, the media, politicians, and economic interests in giving hazards a political identification. He proceeds to analyze recent efforts in the United States and Canada (at both the federal and provincial levels) to be more systematic in identifying hazards. Finally, Doern examines public concern over asbestos in Ontario schools and the resulting governmental response as a recent and crucial case study of the hazard identification process.

Professor Doern concludes this paper with some proposals for reform of the structures and processes of hazard identification. Among them he recommends the establishment of a national research agency to conduct and review research on the human health effects of products and substances as manifested both in the workplace and in the environment.

Study No. 5 LIVING WITH CONTRADICTIONS: HEALTH AND SAFETY REGULATION AND
IMPLEMENTATION IN ONTARIO (305 pages)

by G. Bruce Doern, Michael Prince, and Garth McNaughton

Professor Doern also worked with Assistant Professor Michael Prince and graduate student Garth McNaughton, both of the School of Public Administration at Carleton University, in the preparation of a study on standard-setting, enforcement, and implementation as these relate to asbestos in Ontario. In this paper, the authors examine the current processes in Ontario for making regulations, and implementation and enforcement activities, with particular reference to the Ontario Ministries of the Environment and Labour. This analysis utilizes a framework incorporating certain principles, values, and criteria which Doern, Prince, and McNaughton point to as being critical in the standard-setting process. The case study of asbestos in Ontario schools is looked at again in this study; this time the focus is on the roles and responsibilities of the various agencies and institutions involved and on the implications for a correction programme in non-school buildings.

The authors conclude this study with some proposals for improvements in the consultative aspect of current standard-setting processes. Doern, Prince, and McNaughton also address recommendations to the importance of sharing data on hazardous substances between federal and provincial governments. The study is critical of the Ministry of the Environment with respect to a lack of ongoing inspection and compliance capability; the study is also critical of the Ministry of Labour with respect to a lack of systematic evaluation of data related to implementation across different types of workplaces. The paper ends with a series of proposals for improving health and safety administration within

the Ontario government. These include a more co-ordinated and clearcut division of jurisdiction between the Ministries of the Environment and Labour with respect to asbestos in the buildings sector; a broadened and strengthened role for the Deputy Ministers' Committee on Occupational and Environmental Health; a permanent standard-setting committee in the Ministry of Labour, to parallel the one already existing in the Ministry of the Environment; and an advisory council on environmental health, to parallel the one already lodged in the Ministry of Labour for occupational health.

Study No. 6 WORKER ATTITUDES ABOUT HEALTH AND SAFETY IN THREE ASBESTOS
BRAKE MANUFACTURING PLANTS (172 pages)

by Sally Luce and Gene Swimmer

Professor Sally Luce, a social psychologist at the School of Commerce, and Professor Gene Swimmer, an economist at the School of Public Administration, both of Carleton University in Ottawa, report on a study of the attitudes of workers in three Ontario plants manufacturing brake parts toward occupational health and safety problems. The study is based on a survey of 117 workers at Abex in Lindsay, Raybestos-Manhattan in Peterborough, and Certified Brakes in Mississauga. The survey includes information on the workers' personal characteristics such as age, sex, seniority, and previous illness. It also includes questions about four sets of issues: attitudes about the "joint responsibility system" under which both management and labour are responsible for health and safety in the workplace; perceptions of risk associated with asbestos in the workplace; knowledge about workers' rights and protections regarding occupational health and safety; and attitudes concerning the tradeoff between asbestos exposure and income for job security.

Professors Luce and Swimmer find that, in two of the plants, workers generally feel that the union, the management, and the joint health and safety committee are trying to keep asbestos dust levels down and that the health and safety system is working. Workers are divided on whether they would recommend that a family member or friend work in the plant, and on the efficacy of safety equipment. They are reasonably well-informed about their rights regarding health and safety, although they seem to exercise these rights sparingly. In the third plant, English is not a working language for most employees, and a number of problems that arise out of the resulting communications problems are discussed. The study presents the responses to the survey and a number of analyses of those responses.

* * * * *

Copies of these studies have been lodged at all 56 "full depository" libraries, most of which are public, university, or college libraries located in Ontario. The Commission has a list of these libraries if you wish to check if "your" library is on the circulation; call collect, 416/965-1885. Or you can simply contact the reference desk of your local library.

The Commission also has copies of the studies on hand in its library room, Suite 2213, of 180 Dundas Street West, for interested readers.

Copies of all studies can be purchased in person at the Ontario Government Bookstore, 880 Bay Street, Toronto, Ontario (Telephone: 416/965-2054); or by contacting the Publications Mail Order Service, 880 Bay Street, 5th floor, Toronto, Ontario, M7A 1N8 (Telephone: 416/965-6015).

Prices for the studies are noted below. (Cheques or money orders are made payable to the Treasurer of Ontario and sent to the Publications Mail Order Service.)

Study No. 1	COLLECTIVE BARGAINING AND ASBESTOS DANGERS IN THE WORKPLACE by Morley Gunderson and Katherine Swinton (ISBN: 0-7743-6834-9).	\$ 6.50
Study No. 2	WORKERS' COMPENSATION AND ASBESTOS IN ONTARIO by Peter S. Barth (ISBN: 0-7743-7024-6).	\$ 5.50
Study No. 3	POLICY OPTIONS IN THE REGULATION OF ASBESTOS-RELATED HEALTH HAZARDS by Carolyn J. Tuohy and Michael J. Trebilcock (ISBN: 0-7743-7043-2).	\$10.00
Study No. 4	THE POLITICS OF RISK: THE IDENTIFICATION OF TOXIC AND OTHER HAZARDOUS SUBSTANCES IN CANADA by G. Bruce Doern (ISBN: 0-7743-6960-4).	\$ 4.25
Study No. 5	LIVING WITH CONTRADICTIONS: HEALTH AND SAFETY REGULATION AND IMPLEMENTATION IN ONTARIO by G. Bruce Doern, Michael Prince, and Garth McNaughton (ISBN: 0-7743-7056-4).	\$10.00
Study No. 6	WORKER ATTITUDES ABOUT HEALTH AND SAFETY IN THREE ASBESTOS BRAKE MANUFACTURING PLANTS by Sally Luce and Gene Swimmer (ISBN: 0-7743-7057-2).	\$ 5.00

Further information on publications should be addressed to Ms. Linda Kahn, Executive Co-ordinator, or Dr. Donald Dewees, Director of Research, Royal Commission on Asbestos, 180 Dundas Street West, 22nd floor, Toronto, Ontario, M5G 1Z8 (Telephone: 416/965-1885).

The Commission will be publishing three more studies within the next few months. Details will follow in Newsletters.

2. Royal Commission on Asbestos -- Public Hearings

The Commission intends to hold public hearings during May and June on (a) standard-setting, enforcement and implementation; and (b) workers' compensation. As noted in the last Newsletter, the Commission has been working with its Parties-with-Standing on the list of prospective witnesses; invitations have been extended to several people and replies are anticipated shortly.

Two hearings can be confirmed now:

Dr. Bailus Walker: was the Director of Health Standards Development Programs at the Occupational Safety and Health Administration (OSHA) in the United States from September 1979 to August 1981. He is now Director of the Michigan State Department of Public Health.

Dr. Walker is scheduled to appear before the Royal Commission on Asbestos on Thursday, May 20, 1982, starting at 10:00 a.m.

Mr. William Simpson: chaired the U.K. Advisory Committee on Asbestos, which reported in 1979. He is the Chairman of the U.K. Health and Safety Commission.

Mr. Simpson is scheduled to appear before the Commission on Tuesday, June 1, 1982, starting at 2:15 p.m.

Both hearings will take place in Hearing Room 3 on the 21st floor of 180 Dundas Street West, (second block east of University Avenue -- St. Patrick subway station) Toronto.

A May Newsletter will give details of further hearings.

